

A **A.S.V. NARAYANAN RAO**
v.
RATNAMALA & ANOTHER

B SUPREME COURT, INDIA

(2013) 10 SUPREME COURT CASES 741
HL GOKHALE J
J CHELAMESWAR J
C [CRIMINAL APPEAL NO: 1433-2013[†]]
13 SEPTEMBER 2013

D **CRIMINAL LAW:** *Penal Code, 1860 - Section 304A - Medical negligence - Death due to criminal medical negligence - Maintainability of complaint for - Need to show not just negligence, but gross negligence - Criminal proceedings maintainable only if there is prima facie gross negligence as opined by independent doctor (preferably government doctor) as laid down in Jacob Mathew, (2005) 6 SCC 1 - Held, present case was not a case of gross negligence causing death of patient necessitating proceedings under S. 304A IPC - Hence, criminal proceedings quashed*

E *Police seeking opinion of State Medical Council, which opined that in present case, the doctors seemed to have done their best - Surgical doctor's opinion in consumer dispute was that he was not put on standby, when angioplasty was conducted by appellant-accused cardiologist - However,*
F *surgical doctor's further opinion was that time gap between angioplasty failure and surgery may or may not be a factor for enhancement of risk, and in present case the time gap was not a factor of patient's death - High Court overlooking this evidence of surgical doctor, and declined to quash criminal proceedings on the ground that opinion of a cardio*
G *anaesthetist/ anaesthesiologist was not taken and that standby surgical unit was not ready before angioplasty - Held, the medical negligence if any cannot be said to be gross - Therefore, impugned orders of the High Court set aside and criminal proceedings for medical negligence before trial court quashed*

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[†] Arising out of SLP (Crl.) No. 649 of 2011. From the Judgment and Order dated 28-10-2010 of the High Court of Andhra Pradesh at Hyderabad in Crl. P. No. 6506 of 2007.

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CRIMINAL PROCEDURE: *Criminal Procedure Code, 1973 - Section 482 - Quashment of proceedings against doctor when medical negligence is not gross - Constitution of India - Article 136 - Quashment of proceedings against doctor when medical negligence was not gross - Evidence Act, 1872 - Section 45 - Opinion of third party doctors in determining medical negligence*

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The appellant cardiologist conducted an angiogram on the deceased and finding three blocks in the coronary arteries conducted an angioplasty around 1.30pm. The appellant thereafter informed the respondent (wife of deceased patient) that the angioplasty failed and the blocks of her husband had calcified. The same day around 3.30pm, a bypass surgery was conducted in the same hospital. Various complications arose and eventually the said patient died. The Magistrate took cognizance by *prima facie* concluding that there was material to try the appellant for offences under Section 304-A IPC. The High Court by the impugned order declined to quash the proceedings.

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The appellant argued that in *Jacob Mathew* (2005) 6 SCC 1, it was held that a private complaint under Section 304-A IPC for medical negligence may not be entertained unless there is a credible opinion given by another competent doctor, and the investigating officer should obtain an independent and competent medical opinion (preferably of a government doctor) before proceeding. And the doctor accused of rashness and negligence may not be arrested in a routine manner.

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In the present case the police forwarded the records of treatment to the State Medical Council, which opined that the doctors seemed to have done their best. However, the High Court though it fit to proceed in the matter because the appellant chose to conduct an angioplasty without having a standby surgical unit ready (which caused 5 hours delay in surgery) and without the opinion of a cardio anaesthetist/anaesthesiologist.

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Allowing the appeal of the appellant-accused cardiologist and quashing the criminal proceedings, the Supreme Court held as above.

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- A *A.S.V. Narayana Rao v. State of A.P., Criminal Petition No. 6506 of 2007, order dated 28-10-2010 (AP) sub nom Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582 : (1957) 2 All ER 118 (QB), cited Jacob Mathew v. State of Punjab (2005) 6 SCC 1 : 2005 SCC (Cri) 1369, followed*
- B *Surjit Dan v. State of A.P., Criminal Petition No. 6368 of 2007, reversed*

SS-D/52367/CVR

- C **Advocates who appeared in this case:**
For the appellant - PS Narasimha, Senior Advocate (M Srinivas R Rao & Ms Sudha Gupta, Advocates)
For the respondent - Mahabir Singh, Senior Advocate (Nikhil Jain, CSN Mohan Rao, GN Reddy, Debojit, M Bala Shivudu & D Mahesh Babu, Advocates)
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Chronological list of cases cited

- Criminal Petition No. 6506 of 2007, order dated 28-10-2010 (AP) A.S.V. Narayana Rao v. State of A.P. sub nom Surjit Dan v. State of A.P., Criminal Petition No. 6368 of 2007 (reversed)*
- E *(2005) 6 SCC 1 : 2005 SCC (Cri) 1369, Jacob Mathew v. State of Punjab (followed)*
(1957) 1 WLR 582 : (1957) 2 All ER 118 (QB), Bolam v. Friern Hospital Management Committee (cit)

JUDGMENT

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- J Chelameswar J:**

- [1]** Leave granted. This appeal arises out of an order dated 28-10-2010 in *A.S.V. Narayana Rao v. State of A.P.*¹ of the High Court of Andhra Pradesh.
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- [2]** The aforementioned criminal petition was filed praying that the proceedings initiated against the appellant herein in CC No. 600 of 2006 on the file of the 14th Additional Chief Metropolitan Magistrate, Hyderabad for the offence punishable under Section 304A IPC be quashed. The said petition along with another similar petition by one of the co-accused was heard and disposed of by a common order (order in appeal).
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1. Criminal Petition No. 6506 of 2007, order dated 28-10-2010 (AP) sub nom *Surjit Dan v. State of A.P.*, Criminal Petition No. 6368 of 2007

[3] While the petition filed by the appellant herein was dismissed by the High Court, the other petition of the co-accused was allowed. A

[4] The appellant is a cardiologist. The husband of the first respondent (one Divakar) approached the appellant herein, complaining of pain in the chest on 22-4-2002. Divakar was admitted in the hospital where the appellant was working and kept in the intensive care unit (ICU). Thereafter, the appellant informed the first respondent that Divakar had suffered a mild heart attack. On 23-4-2002, an angiogram was conducted which showed three blocks in the vessels carrying blood to the heart. On 25-4-2002 at 9.30am, the appellant unsuccessfully attempted to perform an angioplasty on Divakar. Around 1.30 in the afternoon, the appellant informed the first respondent that the angioplasty failed as the blocks were calcified. Same day at around 3.30pm, a bypass surgery was conducted on Divakar in the same hospital. Subsequently, various complications developed and eventually Divakar died on 9-5-2002. B C D

[5] On 14-5-2002, the first respondent lodged a complaint against the appellant and others under Section 304A IPC which came to be registered as FIR No. 416 of 2002. E

[6] The police on investigation submitted a final report on 2-2-2005 treating the case to be one of lack of evidence. The respondent filed objections before the Metropolitan Magistrate to the final report and prayed to the Magistrate to take cognizance of the offence. The learned Magistrate by his order dated 11-12-2006 came to the *prima facie* conclusion that there exists material to try the accused for the offence punishable under Section 304A IPC. Challenging the said order the appellant approached the High Court by way of Criminal Petition No. 6506 of 2007. F G

[7] By judgment¹ under appeal, the High Court opined that the material on record “clearly shows negligence on the part of A-1”² and declined to quash the proceedings. H

1. *A.S.V. Narayana Rao v. State of A.P.*, Criminal Petition No. 6506 of 2007, order dated 28-10-2010 (AP) *sub nom* *Surjit Dan v. State of A.P.*, Criminal Petition No. 6368 of 2007

2. The sworn statement of Dr P.V.N. Rao also discloses that A-1 without consulting the anaesthetist and without a surgical stand conducted angioplasty, which should be done by the surgeon, as the I

A [8] Mr P.S. Narasimha, learned Senior Counsel appearing for
the appellant submitted that the High Court clearly erred in
dismissing the petition of the appellant herein. The learned Senior
Counsel argued that the law laid down by this court in *Jacob*
B *Mathew v. State of Punjab*³ has completely been ignored by both
the learned Magistrate and the High Court in deciding to proceed
with the case against the appellant herein. On the other hand, the
learned counsel for the first respondent submitted that the conduct
of the appellant in undertaking the angioplasty without having a
standby surgical unit is clearly in violation of the established
C practice of the medical profession and therefore a clear case of
negligence warranting punishment of the appellant.

[9] This court in *Jacob Mathew*³ considered exhaustively the
various aspects of negligence on the part of a doctor and laid
D down *inter alia*: (SCC p. 33, para 48)

48. ... (5) The jurisprudential concept of negligence differs in civil
and criminal law. What may be negligence in civil law may not
necessarily be negligence in criminal law. For negligence to
amount to an offence, the element of *mens rea* must be shown to
exist. For an act to amount to criminal negligence, the degree of
E negligence should be much higher ie, gross or of a very high
degree. Negligence which is neither gross nor of a higher degree
may provide a ground for action in civil law but cannot form the
basis for prosecution.

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G surgeon was out of station which fact he came to know through
the anaesthetist. The operation was delayed by 5 hrs due to want
of surgeon who was to come from New Delhi, which clearly
shows the negligence on the part of A-1. Further as the patient was
a chronic smoker he should be prepared before undertaking
H angioplasty and the cardiac anaesthesian should be consulted for
fitness of the patient before conducting the same.

The entire record adduced does not indicate as to whether A-1
assessed the condition of the patient on consultation of the cardio
anaesthesian and obtained the fitness certificate for conducting
I angioplasty on the patient.

3. (2005) 6 SCC 1 : 2005 SCC (Cri) 1369

(6) The word 'gross' has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304-A IPC has to be read as qualified by the word 'grossly'.

[10] This court further opined that though doctors are not immune from legal proceedings in the event of their negligence in discharging their professional duties, in the interest of the society, it is necessary to protect doctors from frivolous and unjust prosecution. It was further pointed out the need to frame either statutory rules or administrative instructions incorporating guidelines for prosecuting doctors on charges of criminal negligence. This court therefore, ordered that until such guidelines are laid down, the following procedure is required to be followed: (*Jacob Mathew* case³, SCC p. 35, para 52)

52. ... we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam*⁴ test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

3. *Jacob Mathew v. State of Punjab* (2005) 6 SCC 1 : 2005 SCC (Cri) 1369

4. *Bolam v. Friern Hospital Management Committee* (1957) 1 WLR 582 : (1957) 2 All ER 118 (QB)

A [11] From the final report submitted by the police in the instant
case, it can be gathered that the records pertaining to the
treatment given to the deceased were forwarded to the Andhra
Pradesh Medical Council and also the Medical Council of India
which opined that the “doctors seem to have made an attempt to
B do their best as per records”.

[12] However, the High Court thought it fit to continue the
prosecution of the appellant for two reasons:

C (1) that the appellant chose to conduct the angioplasty without
having a surgical standby unit and such failure resulted in
delay of 5 hrs in conducting bypass after the angioplasty failed;
and

D (2) that the appellant did not consult a cardio anaesthesian before
conducting an angioplasty.

According to the High Court, both the abovementioned “lapses”
on the part of the appellant “clearly show the negligence” of the
appellant.

E [13] The basis for such conclusion though not apparent from the
judgment, we are told by the learned counsel for the first
respondent, is to be found in the evidence of Dr Surajit Dan
given before the A.P. State Consumer Disputes Redressal
Commission in CD No. 38 of 2004. It may also be mentioned
F here that apart from initiating criminal proceedings against the
appellant and others, the first respondent also raised a consumer
dispute against the appellant and others. It is in the said
proceedings, the abovementioned Dr Dan’s evidence was recorded
G wherein Dr Dan in his cross-examination stated as follows:

... Whenever cardiologist performs an angioplasty, he requests for
the surgical team to be ready as standby. I was not put on
standby in the instant case ...

H He further stated:

... The failure of angioplasty put the heart in a compromised
position of poor coronary perfusion that increases the risk of the
emergency surgery after that. In a planned coronary surgery, the
risk is less than in an emergency surgery ...

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However, the same doctor also stated:

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... The time gap between the angioplasty failure and the surgery is not the factor for the death of the patient. The time gap may or may not be a factor for the enhancement of the risk.

[14] Unfortunately, the last of the above-extracted statements of Dr Surajit Dan is not taken into account by the High Court which statement according to us is most crucial in the context of criminal prosecution of the appellant.

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[15] The High Court unfortunately overlooked this factor. We, therefore, are of the opinion that the prosecution of the appellant is uncalled for as pointed out by this court in *Jacob Mathew* case³ that the negligence, if any, on the part of the appellant cannot be said to be “gross”. We, therefore, set aside the judgment¹ under appeal and also the proceedings of the trial court dated 11-12-2006.

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[16] The appeal is allowed, however, there shall be no order as to costs.

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3. *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369

1. *A.S.V. Narayana Rao v. State of A.P.*, Criminal Petition No. 6506 of 2007, order dated 28-10-2010 (AP) *sub nom* *Surjit Dan v. State of A.P.*, Criminal Petition No. 6368 of 2007

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